

Coeur d'Alene (all of Health District No. 1)

Environmental Health Code- sections: 41.1.100 - Water Quality control; 41.1.110- Sewage Disposal in the Rathdrum Prairie in Kootenai County, Idaho; 41.1.400 - critical materials at Fixed Facilities on the Rathdrum Prairie in Kootenai county, Idaho

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Health Ordinance

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1978 ordinance court challenged

## IDAPA 4 1.1

### ENVIRONMENTAL HEALTH CODE

#### HEALTH DISTRICT NO. 1

#### STATE OF IDAHO

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## Rules and Regulations, District Health Department 1

### 41.1.001, GENERAL PROVISIONS

01. Authority. The rules, regulations, and standards set forth hereinafter shall be known as the Environmental Code of District No. 1. This Code shall supersede and replace any county sanitary codes in existence prior to July 1, 1971. This Code is adopted pursuant to the authority granted to the District Board of Health under Chapter 4, Title 39, Idaho Code, and in the manner required in Chapter 52, Title 67, Idaho Code. The provisions of the Code are supplementary, and should be interpreted in a manner consistent with Chapter 1, Title 39, Idaho Code and any state or federal laws which establish exclusivity or primacy in a field of regulation for another public entity as a matter of law.

02. Conflict. In the event of any conflict between city or county ordinances or heretofore existing rules and regulations of county health boards and departments and this Code, the respective provision which more completely protects public health or the environment, shall prevail. Nothing in this Code shall be deemed to prevent the enforcement of any standard, rule, or regulation relating to air, water, or health quality now existing or hereinafter adopted by the State Board of Health and Welfare or any interested agency of the federal government. Nothing in this Code shall be deemed to conflict with the enactment by any city or county in the District of any ordinance or rule or regulation placing additional restrictions or limitations which contribute to enhancement of water, air, land, or health quality. Where the provisions of this Code conflict with state or federal statutes or rules which preempt regulation of a particular subject or application of this Code in a particular manner, the preemptive state or federal regulation shall prevail to the extent that application of the conflicting rules cannot be accommodated.

03. Policy. This Environmental Health Code is based on the recognition that pollution of the air, land, and waters of this district constitutes a menace to public health and welfare, creates public nuisances, is harmful to wildlife, fish, and other aquatic life, and impairs domestic, agricultural, industrial, recreational, and other beneficial uses of air, land, and water. It is the duty of the District Board of Health to establish the quality standards of the environment in the interest of health, individual and community alike, and to prevent the outbreak and spread of dangerous and infectious disease.

04. Definitions. The terms used in this Code shall be interpreted consistent with the definitions set forth in this section.

a. "Board" shall mean the Board of Health for District #1.

b. "Code" shall mean Environmental Health Code of IDAPA 41.1.001,04.b.--41.1.100,01.b.

Health District #1, including the several sections which follow and the entire series of rules and regulations now and hereinafter adopted by the Board and by the State Board of Health & Welfare.

c. "Floathouse" is defined as a watercraft that is not self-propelled and with a dwelling place on it for habitation by human beings, whether said habitat is seasonal, itinerant, temporary, or permanent; and whether the floathouse is attached to land, floating free in the water, or tied to a fixed structure.

d. "Health Officer" as used in this Code shall mean the Director of Health District #1, or any agent or employee thereof whose duties include enforcement of any provision of this Code.

e. "Public sewage treatment facility" shall mean any sewage collection and treatment system with more than two (2) individual service connections.

f. "Variance" A variance is a grant of relief from the literal application of a Panhandle Health District regulation upon a showing that undue hardship, related to unique characteristics of a site, would result from literal adherence to such regulation.

g. The Board may, by regulation, provide such other definitions as may be necessary to clarify this Code or to supplement definitions established by state laws or regulations.

41.1.002 - 41.1.099 (RESERVED)

41.1.100, WATER QUALITY CONTROL

01. Sewage and Waste Disposal

a. Political Subdivisions. Any political subdivision within the District may enter into a sewage management plan agreement with the District, the purpose of which will be to establish permanent sewage disposal practices that will fulfill the needs and goals of the political subdivision and the responsibilities of the District. The Board shall have authority to enforce the provisions of sewage management plan agreements.

b. Public Sewage Treatment. All Public sewage treatment facilities shall be constructed and operated in accordance with applicable state IDAPA 41.1.100,01.b.--41.1.100,01.c.iv.

and federal laws and regulations. All public sewage treatment facilities constructed after the effective date of this regulation shall be owned, operated, or maintained by a political subdivision of the State of Idaho, as defined in Idaho Code or by such entity as may be deemed acceptable by the Board. All public sewage treatment facilities incorporating subsurface disposal in the design must include two disposal fields, each sized for the design loading and capable of being alternately loaded; in addition, a third acceptable site, large enough to install an additional replacement field, must be available.

c. Private Sewage Disposal. No residence, place of business, or other building where persons congregate, reside, or are employed shall hereafter be constructed or altered until the owner or builder or agent thereof shall have first been issued a permit to construct sanitary disposal facilities by the Health Officer.

I. This regulation shall not apply to any construction on a street or alley in which there is a public sanitary sewer or to any construction within 200 feet of a public sanitary sewer where connection with such sewer is actually made. In such case, the residence, place of business, or other building shall connect to the sewer.

ii. The application for a permit to construct sanitary disposal facilities shall include all applicable information as set forth in the Idaho Department of Health and Welfare Rules and Regulations for Individual and Subsurface Sewage Disposal Systems, and by a fee as set in the fee schedule.

iii. No drywells or drainfields deeper than 4 feet below ground level shall be permitted for the disposal of domestic sewage waste. No sewage holding or retention tanks shall be allowed as a method of sewage disposal for residential purposes unless the operation and maintenance, including pumping of the facility, is conducted by or under the authority of a political subdivision as defined in Idaho Code.

iv. No dwelling or building shall be occupied until the sanitary disposal facilities have been constructed, inspected, and approved by the Health Officer or his agents. The sanitary disposal facilities shall not be covered with dirt or otherwise completed until  
IDAPA 41.1.100,01.c.iv -- 41.1.100,01.d.iii

inspected and approved.

d. Septage Disposal Site. It shall be unlawful for any person engaged in the business, firm or corporation to clean any septic tank, sewage pit, or other means of sewage disposal, or to operate a septage disposal site within the limits of the District without first having been issued a registration permit by the Health Officer.

I. Application shall be made upon a form provided by the Health Officer and shall be accompanied by a fee as set in the fee schedule. The registration permit shall be issued yearly and shall be revocable for failure to comply with the rules and regulations governing sewage

disposal. Each permit shall be only for the unexpired portion of the calendar year for which the permit is issued, and at the end of the calendar year all permits shall expire becoming void and of no further effect.

ii. Any person engaged in the business of removing and transporting sewage shall comply with all applicable rules and regulations governing removal, transportation, and disposal of sewage or sewage sludge issued by the Idaho State Department of Health and Welfare and with all applicable regulations hereinafter adopted.

iii. All applications for permits to operate septage land disposal sites must be accompanied by a plan of operations which shall include details relative to application rates and methods, access control, odor control, control of surface water runoff, cropping, and vegetation. All land disposal sites must not be closer than three hundred (300) feet from a property line, nor closer than one quarter (1/4) mile from a residence at the time the site is established. All disposal sites must provide access for all-weather operation. All land disposal sites established after the effective date of these regulations may be required to have an engineering report prepared by a licensed engineer detailing such items as site topography, site boundaries, property boundaries, direction and distance to nearest residence(s), depth, and type of soil strata, depth to ground water, direction of prevailing winds, and such other information as may be deemed necessary by the Health Officer. All required information must be submitted to and IDAPA 41.1.100,01.d.iii. -- 41.1.110,04.b.

approved by the Health Officer prior to the issuance of a permit.

e. Prohibited Conditions.

I. Domestic sewage, septage, sanitary sewage, industrial waste, agricultural waste, sewage effluent, or human excreta shall not be allowed to remain open to the atmosphere or on the surface of the ground in such a manner so as to be a source of noxious or offensive odors, to be dangerous to health, or to be a public nuisance.

ii. Domestic sewage, sanitary sewage, septage, industrial sewage, industrial waste, agricultural waste, sewage effluent, or human excreta shall not be allowed to endanger any source or supply of drinking water, or cause damage to any public or private property.

iii. Raw or untreated sewage, septage, or industrial waste, or agricultural waste shall not be allowed in any body of water, water course, or any underground water drain, any storm water drain, channel, or other surface water drain.

41.1.101 - 41.1.109 (RESERVED)

41.1.110, SEWAGE DISPOSAL ON THE RATHDRUM PRAIRIE IN KOOTENAI COUNTY, IDAHO

01. Preamble. The Board has determined that extensive use of subsurface wastewater

disposal on the Rathdrum Prairie presents a threat to the public health by contamination of the Rathdrum Aquifer, which is a drinking water source. It is the intent of the Board to adopt rules and regulations to govern subsurface sewage disposal on the Rathdrum Prairie.

02. Title. These rules and regulations hereinafter shall be known and cited as the "Rathdrum Prairie Sewage Disposal Regulations".

03. Scope. The provisions of these regulations shall apply to subsurface sewage disposal systems installed on the Rathdrum Prairie.

04. Definitions. The following definitions shall apply to the Rathdrum Prairie sections of these regulations.

a. "Sewage Loading" - shall mean the total liquid volume of sewage produced on any given parcel of land and expressed as gallons/day.

b. "Dwelling Equivalent" - shall mean the total sewage loading from a single family dwelling. When applied to structures or facilities other

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than housing units, a dwelling equivalent shall be equal to 250 gallons/day or shall be equal to 20 persons using a non-residential facility on 40 hr/week basis, with no wastewater generation except from restrooms.

c. "Rathdrum Prairie", shall mean that area of land situated in Kootenai County and more particularly defined by the USGS map describing the boundaries of the Rathdrum Prairie Aquifer identified and designated under the authority of Section 1424(e) of the Safe Drinking Water Act (PL 93523) (Federal Register, Vol. 43, No. 28 -Thursday, February 9, 1978).

d. "Approved Subdivision", shall mean a legally platted parcel of land that has been signed and approved by the Panhandle Health District I as meeting the requirements of the Environmental Health Code.

e. "Sewage management plan" shall mean a method of action, procedure, or arrangement approved by the Panhandle Health District I describing how collection, treatment, and disposal of sewage shall be addressed within the boundaries of a political subdivision and shall include a map of the area affected by the Sewage Management Plan.

05. Subsurface Sewage Disposal Systems.

a. All installations of subsurface sewage disposal systems must be made in compliance with the Environmental Health Code of the Panhandle Health District I and the rules and regulations of the Idaho Department of Health and Welfare.

b. A subsurface sewage disposal system for one dwelling equivalent may be installed without requirements other than subparagraph (a), if the system is on a single parcel of land of five acres or larger in surface area and the total loading for that parcel does not exceed one dwelling equivalent per five acres, except where one system is replacing another. Every parcel of land created after December 20, 1977, except as otherwise permitted by these regulations, shall maintain the dwelling equivalent(s) allowed for the original parcel of land.

c. No subsurface sewage disposal system shall be installed on any parcel of land of less than five acres in surface area except under the

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following conditions:

I. The parcel of land is located within the boundaries of a public sewer district or municipality where the governing board has adopted a Sewage Management Plan approved by the Panhandle Health District I Board of Health which will result in the construction and operation of, or connection to, a central sewage treatment plant. The Sewage Management Plan area must be entirely within the boundaries of the municipality, and the Sewage Management Plan must include a map delineating the boundaries of the Sewage Management Plan Area.

ii. Parcels of land less than five acres in size and acquired or established prior to December 20, 1977, will be permitted for a subsurface sewage disposal system for a single-dwelling equivalent, provided such parcels meet all other regulations governing individual and subsurface sewage disposal systems, or,

iii. Where one subsurface sewage disposal system is replacing another with no increase in sewage loading.

d. On all developments subject to the provisions of subparagraph (c)iii above, the subsurface sewage disposal system shall have the dry or wet sewer system with necessary laterals installed within the development. All installations shall be done in coordination with local government planning, and approved by the state Division of Environmental Quality where applicable.

e. Upon notification by the Health Officer the owner of any parcel of land utilizing a subsurface sewage disposal system shall disconnect such system from any buildings on his parcel of land and shall connect the building sewer from the buildings to a collection and treatment system whenever it becomes available for service to his parcel.

41.1.111 - 41.1.199 (RESERVED)

41.1.200, OPEN WATER PROTECTION

## 01. Boats and Houseboats.

a. It is unlawful for any boat, motorboat, floathouse, sailboat, or any other kind of boat containing wastewater facilities to be on the waters of any stream, river, or lake in the District unless such wastewater facilities shall be sealed to prevent a discharge into

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any waters. The method of sealing such wastewater facilities shall be subject to the approval of the panhandle Health District.

b. Any person authorized by the Health Officer or any law enforcement person may stop and board any boat on the said waters and examine the wastewater facilities on such boats to see that such facilities are properly closed and sealed.

c. It shall be unlawful for any person to throw overboard, dump, or otherwise dispose of or discharge, or cause, permit, or suffer to be discharged, any garbage, refuse, rubbish, waste, or sewage from any boat into or upon the waters of any stream, river, lake, or other body of water within the boundaries of the District.

d. If any watercraft located upon the waters of this District is found to have a marine toilet which is not in compliance with the requirements of this section, the Health Officer shall have the following alternative or cumulative powers to:

I. cause the marine toilet to be locked and sealed to prevent usage;

ii. require such watercraft to be removed from the waters of this District until the marine toilets are made to conform with the requirements of this regulation.

## 02. Public and Private Marinas.

a. Any marinas, whether public or private, providing moorage for vessels equipped with onboard wastewater facilities shall provide sewage waste disposal facilities. These facilities shall consist of a pump station that is capable of adequately cleaning waste retention tanks on the largest boat that could reasonably use the moorage. Such plans must be approved by the Department of Health and Welfare.

b. All marinas, whether public or private, must provide shore-based toilet facilities for their users.

## 03. Floathouses.

a. All floathouses must have approved wastewater facilities.

- b. All discharges from all floathouses, whether old or new, regardless of source, are

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prohibited.

- c. All floathouses must obtain a sewage permit from the panhandle Health District.

- d. The cost of the permit shall be set in the fee schedule.

41.1.201 - 41.1.299 (RESERVED)

#### 41.1.300, LAND QUALITY CONTROL

01. Solid Waste Collection. It shall be unlawful for any person, private franchisee, or contract collector haulers to engage in the business of collection, transporting, hauling, or conveying any refuse over the roads, highways, streets, or alleys of the Panhandle Health District 1, or to dump or dispose of the same unless and until each person obtains an annual permit from the panhandle Health District 1.

#### 02. Animals and Fowl.

a. Every pen, yard, kennel, coop, warren, stable, or other enclosure or structure wherein animals or fowl are kept shall be maintained in a clean and sanitary condition, devoid of all rodents and vermin, and free from objectionable odor.

b. No manure shall be allowed to accumulate such that it will be a source of flies or fly breeding, or a source of noxious or offensive odors, dangerous to health, or an unhealthy nuisance.

c. No person owning or controlling the possession of horses, mules, cattle, sheep, goats, hogs, or other animals shall willfully or negligently keep or maintain such animal(s) in enclosures or permit such animal regularly to graze so as to constitute a public health hazard and/or a hazard to water quality.

#### 03. Subdivisions.

a. All plats as defined in Title 50, Chapter 13, Idaho Code or local subdivision ordinance, shall bear a sanitary restriction in compliance with Sections 50-1326 to 50-1329, Idaho Code. The Health Officer shall be the delegate of the State Board of Health and Welfare authorized to provide the certificate required in Section 50-1326, Idaho Code.

b. Every person or corporation intending to file any plat with the office of any County

Recorder in the District shall first present a copy of the proposed plat to the Health Officer and

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shall submit a written application for a permit, accompanied by fee as set in the fee schedule.

Said application shall state the proposed method of water supply and sewage disposal for each site intended for sale in said plat. The Health Officer may require such additional information as he feels necessary to determine whether the sanitary restriction is satisfied.

c. The Health Officer may require that a plat be served by a public water or sewer system prior to providing a certificate of approval in accordance with Section 50-1325, Idaho Code.

d. In geographic locations where the cost of sewer facilities is presently economically prohibitive, and apparently will remain economically prohibitive during the next ten years, the Health Officer may issue a certificate of approval when the following conditions are satisfied:

I. soil studies, such as a study of test borings, indicate that proper treatment and disposal can be achieved as determined by the Health Officer;

ii. groundwater, even under the most extreme conditions, will not be closer than six feet from the ground surface;

iii. the sewage disposal area has not been filled with more than 2 feet of material within two years of the date when the permit is requested;

iv. at least two drainfield systems can be provided within each lot.

e. Nothing in this section shall be deemed to waive or modify in any respect any of the other regulations of this code. Approval of a plat shall not bar or stop the Health Officer at any later time from enforcing any of the regulations of this code.

f. All plats shall bear the signature of the Health Officer or his representative before filing.

04. Vector Control. The Health Officer may require the control or eradication of any rodent, insect, or other arthropod on public or private property which is known to be a vector of human disease when the vector is present in sufficient numbers to represent a health hazard or public nuisance.

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41.1.400, CRITICAL MATERIALS AT FIXED FACILITIES ON THE RATHDRUM PRAIRIE IN KOOTENAI COUNTY, IDAHO.

01. PURPOSE AND INTENT: The purpose and intent of this regulation is to provide agencies that are currently involved with emergency planning and emergency response duties

and businesses with duties to report their handling of chemicals and other potentially hazardous materials, with a mechanism to meet the mandate of existing regulations by facilitating channels of communication. It is also intended to aid in protection of the Rathdrum Prairie Aquifer in Kootenai County, designated as a sole source aquifer by the United States of America, from potential sources of contamination from materials handling and storage at facilities located over or adjacent to the Aquifer. The regulations strive to achieve such protection through proper use of secondary containment systems at Fixed Facilities that use, store, manufacture or handle Critical Materials. Reporting these chemicals to the concerned agencies will facilitate coordination among industry, government agencies and response personnel so that they may more successfully meet the requirements of the following:

- a. Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA III).
- b. Article 80 of the Uniform Fire Code (UFC).
- c. Chapter 9 of the Uniform Building Code (UBC).
- d. Local building, planning and zoning codes applicable to lands which overlie the Aquifer.
- e. Any applicable rules administered by any other state, federal or local agency which has jurisdiction over matters related to Critical Materials.

02. DEFINITIONS: The following terms shall be construed throughout this regulation in a manner consistent with the following definitions:

- a. Container - Any vessel used to hold critical materials. A single container is one not connected to any other container by way of valves, piping, etc.
- b. Critical Material - Any liquid, semi-liquid, flowable, or water soluble solid that is listed on the most current Superfund Amendments and Reauthorization Act, Title III (SARA III) List of Lists published by the Office of Toxic Substances, U.S. Environmental Protection Agency, Washington, D.C. or is required by the U.S. Occupational Safety and Health Administration to have a material safety data sheet (MSDS).

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- c. Critical Materials Compliance Certificate (CMCC). A certificate indicating compliance with the reporting and secondary containment requirements of this Regulation.
- d. Critical Materials Use Activity - Any undertaking that involves the use, storage, manufacture or handling of Critical Materials at a Fixed Facility above the secondary containment quantity set forth in this Regulation, or incorporated into this Regulation by

reference.

- e. Director - The Director of the Panhandle Health District #1 or his designee.
- f. Fixed Facility - Any established land use, building, dwelling, structure or site upon which or wherein a Critical Material Use Activity is conducted.
- g. Key Box - A durable, locked box that holds keys firefighters or other emergency personnel may use to gain entry into a structure. The key box shall be a type approved by the local fire chief pursuant to section 10.209 of the Uniform Fire Code.
- h. LEPC - Local Emergency Planning Committee. A standing committee established by the Office of the Governor through the State Emergency Response Commission (SERC) to fulfill Emergency Planning and Community Right to Know requirements pursuant to SARA III.
- I. Material Safety Data Sheets (MSDS). Documentation required by OSHA to provide a description of the characteristics and potential hazards of a wide range of substances that are potentially Critical Materials.
- j. NFPA 704 - The National Fire Protection Association's placarding system used to identify the health hazard, flammability, reactivity and potential to react with water of a particular substance.
- k. Secondary Containment Quantity - The quantity of a Critical Material that requires compliance with this Regulation. For those Critical Materials specifically listed in the SARA III List of Lists (or as otherwise noted) the following quantities of qualifying substances shall be subject to this Regulation:

I. SARA Section 302 Extremely Hazardous Substances -Ten (10) pounds in the aggregate, exclusive of solvent or other medium or, one

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hundred (100) pounds in the aggregate, inclusive of solvent or other medium.

ii. CERCLA Hazardous Substances (listed in 40 CFR 302, Table 302.4) one hundred (100) pounds in the aggregate, exclusive of solvent or other medium or, one thousand (1000) pounds in the aggregate, inclusive of solvent or other medium.

iii. SARA Section 313 Toxic Chemicals - one hundred (100) pounds in the aggregate, exclusive of solvent or other medium or, one thousand (1000) pounds in the aggregate, inclusive of solvent or other medium.

iv. SARA Section 311 and 312 Chemicals (Not listed in the List of Lists) for which OSHA

MSDS must be developed pursuant to OSHA Hazard Communication Standards -five thousand (5000) pounds in the aggregate, inclusive of solvent or other medium.

l. Secondary Containment System - Site improvements and/or development criteria that are designed to isolate and prevent Critical Materials from entering the soil or surface or ground waters.

m. Rathdrum Prairie Aquifer (Aquifer) - The underground water source identified and designated under the authority of Section 1424(e) of the Safe Drinking Water Act (PL 93-523) (Federal Register, Vol. 43, No. 28 -Thursday, February 9, 1978).

### 03. APPLICABILITY

a. This Regulation shall apply to any person, firm, corporation, or government agency owning, operating, or proposing to locate, establish, or operate a Fixed Facility over the Aquifer or within a recognized Aquifer recharge area in Kootenai County, Idaho. Any Fixed Facility so located shall comply with the requirements of this Regulation prior to initiation of operation or engaging in any Critical Materials Use Activity, if established after the effective date of this Regulation. Fixed Facilities in operation or engaging in Critical Materials Use Activity on or before the effective date of this Regulation shall attain compliance by the threshold dates established herein. Every owner or operator of a Fixed Facility shall be required to show compliance with this Regulation by obtaining a Critical Materials Compliance Certificate appropriate for current operations.

b. The following activities shall require a new

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application to the Panhandle Health District I to determine compliance with this Regulation:

I. Establishing a new use that would qualify as a Fixed Facility.

ii. Remodeling, operating changes, or expansion of an existing Fixed Facility which would modify the type or quantity of Critical Materials Use Activity.

iii. Changes in the location or method of use, storage, manufacture or handling of Critical Materials in any Fixed Facility.

iv. A change in ownership or addition of new Critical Materials meeting the quantity thresholds established by this Regulation at a Fixed Facility.

c. Any CMCC granted is specific to that action and the application filed therefore. Subsequent actions, meeting the criteria set by Subsection 41.1.400,03.b, shall require separate

plan reviews and approvals to obtain compliance.

d. Fixed Facilities in existence prior to enactment of this Regulation shall comply with reporting requirements established herein on or before one year from the effective date of adoption of these regulations, and shall implement secondary containment systems, on or before three years from the effective date of adoption of these regulations. Upon proper showing by an applicant that good cause exists, the director may authorize a compliance agreement which allows the applicant up to one additional year to install secondary containment systems.

#### 04. APPLICATION REQUIREMENTS OF FIXED FACILITIES ENGAGED IN CRITICAL MATERIALS USE ACTIVITIES:

Each applicant for a Critical Materials Compliance Certificate must provide:

a. Sufficient information to allow the Director to determine the type, quantity, and physical state of all Critical Materials that are used, stored, manufactured, or handled at the Fixed Facility location. The Director may require the applicant to provide a complete list of Critical Materials present at the Fixed Facility.

b. Sufficient information about the Fixed Facility to allow classification in accordance with the Standard Industrial Classification system of the U.S. Department of Commerce.

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c. Building plans and site development drawings showing compliance with the secondary containment requirements established by this Regulation. Such plans shall also provide confirmation that the secondary containment methods are compatible with the materials to be contained and that Critical Materials at the Fixed Facility are isolated from storm water or other surface waters on the site. The Director may require that any such plans be certified by a licensed engineer. The required building and/or site plans shall show at least the following:

I. Location of Critical Materials in buildings and other designated site areas.

ii. Location of Key Box if required by the local fire chief.

iii. Location of NFPA 704 placards if required by the local fire chief.

d. Proof of contact and resultant acknowledgment from the agencies named below which have codes, standards, and/or regulations which must be met by the applicant with respect to handling of Critical Materials. The Director will designate the agencies needing contact for each Fixed Facility based upon information provided by the applicant.

----- Local Fire Department

----- Local Emergency Planning Committee

----- Kootenai County Department of Planning and Zoning

----- Kootenai County Building Department

----- Applicable City Building Department  
----- Applicable City Planning and Zoning Department  
----- Bureau of Pesticides, Department of Agriculture  
----- Division of Environmental Quality  
----- Idaho Department of Water Resources

e. An opportunity for the Panhandle Health District to perform an inspection to assure compliance with secondary containment criteria previously approved through the plan review. If approved, and the agency review and reporting checklist (subsection (d) of this Section) has been completed, a CMCC will be issued. The Director may delegate site inspection duties to officials of a cooperating agency.

f. Payment of the review fee for CMCC issuance established by Resolution of the Panhandle District Board of Health in order to reimburse

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costs of administering the Critical Materials program.

**05. PERFORMANCE STANDARDS FOR FIXED FACILITIES:** Each Fixed Facility as defined in this Regulation, shall conform to the following performance standards:

a. Shall construct and maintain a secondary containment system for all Critical Materials. Said secondary containment system shall be designed to prevent infiltration of any Critical Materials into the ground in the event that they are released from their original storage containers.

b. The secondary containment system and methods must be non-reactive and resistant to the materials to be contained and must isolate the Critical Materials at the Fixed Facility from storm water, other surface waters on the site, and from reactive critical materials present in the same Fixed Facility.

c. Secondary containment systems must be sized to contain at least 110% of the volume of the largest container, or 10% of the aggregate volume of all containers, whichever is greater, in any containment area within a Fixed Facility.

d. The owner or operator of any Fixed Facility shall report the presence of any Critical Materials Use Activities to the responsible local, state, and federal agencies as required by statutes, rules, and provisions of this Regulation.

e. Any spilling, leaking, emitting, discharging, escaping, or leaching of any Critical Material into the secondary containment system or the environment must be reported to the Panhandle Health District or the local fire department immediately upon discovery of the release.

f. Should conflict arise among the applications of local, state, and federal regulations regarding Critical Materials Use Activities, the regulation that provides the greatest degree of protection to the Aquifer shall prevail, except where legal preemption of regulatory authority by state or federal agencies may require application of a different standard of protection.

06. VIOLATION: Any owner or operator of a fixed Facility shall be deemed to have violated this Regulation if:

a. A Fixed Facility is operated or if Critical Materials Use Activities are conducted on any

Environmental Health Code - 18site without first procuring a Critical Materials Compliance Certificate or if changes are made to Critical Materials Use Activities at a Fixed Facility as set forth in Section 41.1.400, 03.b. of this Regulation within reapplying for a CMCC for the Fixed Facility.

b. An owner or operator of a Fixed Facility submits knowingly false or incomplete reports to the Panhandle Health district or other responsible agencies or officials concerning the nature or quantity of Critical materials present at a Fixed Facility governed by this Regulation.

c. An owner or operator fails to implement or maintain secondary containment of Critical Materials at a Fixed Facility as required by this Regulation.

d. An owner or operator fails to comply with time and reporting standards for any Critical Materials Use Activities or fails to report any discharge of Critical Materials into the secondary containment system required by this Regulation.

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#### 41.1.900 , ADMINISTRATIVE PROCEDURES, EXCEPTIONS, PENALTIES, AND ENFORCEMENT

01. Responsibility of Permit Applicant. It shall be the responsibility of any person applying for, or required to apply for, a permit required by this Code, to show affirmatively, by

all reasonable means, that his/her undertaking complies with this Code or with any related regulations, statutes, or ordinances.

02. Permit Revocation. Any permit or permission, actual or implied, granted by the Health Officer or his predecessors may be revoked, for cause, by written notice sent to the permit holder or is agent. Any person, association, or corporation who continues to act under such permit or permissions actual or implied, more than ten days after the sending or delivery of notice of revocation shall be presumed to be in violation of this code and subject to the penalties provided herein.

03. Variance Standards. A variance may be granted only upon an affirmative showing by an applicant that the undue hardship is caused by a physical characteristic of a site that is not of the applicant's making and that approval of the variance would not be contrary to the public interest or to the purposes of the Environmental Health Code.

04. Variance Procedures.

a. An applicant for a variance shall obtain a Variance Application Form from the Panhandle Health District and, after completing the application form, shall return the application to the Environmental Office. The Variance Application shall require the applicant to provide, in addition to information required by the application form itself, the following:

i. An accurate site plan showing development of the site in question, present and proposed, depicting all features relevant to the variance request. The Director, or his designee, shall identify information necessary to proper processing of the request if information other than that normally required must be supplied. The applicant shall describe the current and proposed use of the site in question.

ii. A narrative statement addressing the efforts, including consideration of design alternatives, which the applicant has undertaken to comply with the regulation from which a variance is sought.

iii. A narrative statement explaining the nature of the hardship, if any, imposed literal compliance with the regulation in

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question.

iv. A narrative statement explaining the effects of the requested variance on the interests of adjoining landowners and/or of the public at large.

v. A narrative statement detailing what use could be made of the site in question if the requested variance were not granted.

b . The completed Variance Application shall be returned to the Environmental Office accompanied by a \$50 initial filing fee. The completed application shall be submitted to the Panhandle Health District Hearing Officer who shall determine whether, on its face, it sets forth a colorable claim for a variance from the Environmental Health Code. If the Hearing Officer determines that the application does not set forth a colorable claim for variance, he/she shall return the application to the applicant with a written explanation of the action taken. Said initial determination and the accompanying explanation shall be forwarded to the Board which shall act upon the Hearing Officer's initial determination by affirming it or remanding it to the Hearing Officer for further proceedings.

c. If the Hearing Officer determines that the application presents a colorable claim for a variance, he shall return the application to the Environmental Office with instructions to prepare a notice of public hearing concerning the requested variance. The applicant shall pay an additional processing fee of \$150 if the Hearing Officer makes such a finding. Said fee may be adjusted as with all other Panhandle Health District fees in accordance with a sliding scale coordinated with Federal poverty standards.

d The Environmental office staff shall notify the applicant that his/her application has passed the initial screening and that the names and mailing addresses, on self-adhesive labels, of all owners of land located within 300 feet of the external boundaries of the site in question must be provided. Said names shall be provided or checked by a land title company or other business whose commercial purpose it is to provide such information. The applicant shall be solely responsible for the accuracy of such information.

e. Using the mailing list provided by the

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applicant, notice of public hearing shall be sent by first class mail and posted on the site in question in a conspicuous manner. The Environmental Office shall maintain records verifying completion of the notification process. Mailing and posting shall be accomplished at least 15 days prior to the date of the hearing established by the Hearing Officer.

f. Upon the appointed date, the Hearing Officer shall conduct a public hearing concerning the variance request. The applicant, Panhandle District staff, interested members of the public, and public agency representatives shall be allowed to participate in such hearing. The Hearing Officer may establish time limits or other rules of procedure to expedite hearing of the request. The Hearing Officer shall establish a record of the hearing and shall see that a tape recording is made of the proceedings. Exhibits shall be identified in the record in order that they may be associated with the taped record of the hearing.

g. Upon completion of the hearing and compilation of the record in each application, the Hearing Officer shall prepare a recommended decision which shall be transmitted to the Board for final action. The Hearing Officer may recommend that the application be approved, be

approved with conditions, or that the application be disapproved. His/Her recommendation shall set forth facts found relevant to the decision, legal principles applicable to the recommended ruling, and conclusions drawn from the hearing process.

h. At its next regular meeting, or as soon as the application can be placed upon its agenda, the Board shall consider the record compiled and the Hearing Officer's recommendation and shall decide the request without further hearing by the Board. The Board may accept the recommendation of the Hearing Officer, may reverse the recommendation, or may modify the recommended decision for reasons to be found in the record. If the Board modifies or reverses the Hearing Officer's recommendation it shall set forth its reasons for doing so in writing with reference to parts of the compiled record or conclusions drawn therefrom. The Board may also elect to remand the request to the Hearing Officer for clarification or for further hearings to obtain information the Board deems essential. Confirmation of the Hearing Officer's

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recommendation may be accomplished by Board action adopting the Hearing Officer's decision as its own. Appeals from Board action may be taken in accord with provision of Idaho Code Section 39-418.

05. Penalties. Any person, association, or corporation who shall violated provisions of this Regulation may be penalized as follows:

a. Shall be subject to a penalty as set forth in Idaho Code Section 39-419 or as otherwise provided by Idaho Code Section 39-117. Each day of violation of a provision of this Regulation shall constitute a separate offense subject to cumulative punishment.

b. May be subject to a civil court judgment enjoining violation of the Regulation and such civil penalties, costs, and fees as may be necessary to compel compliance.

06. Severability. Should any provision of this Regulation or any particular application thereof, be declared unconstitutional or invalid for any reason by a court of competent jurisdiction, such decision shall be affect the validity of the remaining provisions of this code, which shall remain in full force and effect.

07. Effective Date. This Regulation shall be effective on the 18 day of September, 1990, and shall remain in effect until subsequently repealed or modified. Sections of this Code which were in effect prior to this recodification shall relate back to the date they were first made effective pursuant to the rulemaking process.

41.1.901 - 41.1.999 (RESERVED)

DATED this 28 day of August, 1990.

Panhandle board of Health

Chairman

Attest

Secretary

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41.1.901 - 41.1.999 (RESERVED)

DATED this 28th day of August, 1990

Panhandle Board of Health

\_\_\_\_\_  
Chairman

Attest:

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Secretary

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